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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C.**

DA 95 - 1934

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| In the Matter of | ) | |
| | ) | Transmittal No. CT 3076 |
| AT&T Communications | ) | |
| Contract Tariff No. 360 | ) | CC Docket No. 95-146 |
| | ) | |

## ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: September 8, 1995 ; Released: September 8, 1995

By the Chief, Common Carrier Bureau:

**Direct Case Due:** September 22, 1995
**Oppositions Due:** October 6, 1995
**Reply Due:** October 13, 1995

## I. INTRODUCTION

1. On February 6, 1995, AT&T Corp. (AT&T) filed Contract Tariff Transmittal No. CT 3076, which proposes unilateral changes to Contract Tariff No. 360. These modifications include changes in the rate schedules contained in Contract Tariff No. 360, elimination of term and volume discounts, and imposition of a cap of $205,000 on the month of free calling provided for in the tariff. The Bureau, in the June 5, 1995 order initiating this investigation, suspended the transmittal for five months.[1]

## II. BACKGROUND

### A. Summary of Tariff Filing and Related Pleadings

2. AT&T Contract Tariff No. 360 (Transmittal No. CT 500), which became effective on August 18, 1993, implemented a contract between AT&T and Interworld Communications Corp. (ICC), the initial customer. The contract tariff offered a thirty-six

[1] AT&T Communications Contract Tariff No. 360, Transmittal No. 3076, Order, DA 95-1244 (June 5, 1995) (*Suspension Order*).

month term plan primarily for international communications services for "winback"[2] and new growth traffic and included separate contract tariff rates for over 80 countries. The contract tariff was modified on three subsequent occasions between August 1993 and September 13, 1994 with the consent of ICC.[3] After the last set of changes became effective, MCI Communications Corporation (MCI) ordered service under Contract Tariff No. 360 and began to receive service under the tariff on March 23, 1995.

3. AT&T filed Transmittal No. CT 3076 on February 6, 1995, in which it proposes a variety of revisions to the contract tariff. Specifically, AT&T proposes to eliminate the term and volume discounts and to raise rates to 27 countries. AT&T contends that the current Contract Tariff No. 360 rates to these countries are well below its long-range-incremental-costs (LRIC)[4] of serving the countries involved and that the proposed increases would raise the rates so that they are "no more than 5 percent above cost."[5] The transmittal would also cap a customer's total usage under Contract Tariff No. 360 at

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[2] AT&T considers a customer's traffic to be "winback" if it was previously carried by another interexchange carrier and, subsequently, the customer selects AT&T as its interexchange carrier.

[3] Transmittal No. CT 1134, effective January 1, 1994, made various changes to the Contract Tariff No. 360 rates to Mexico, including elimination of the Schedule II rate table and increases in the Schedule I rates for the Standard period. On September 13, 1994, a revised tariff went into effect (Transmittal Nos. CT 2252 and CT 2340) that reduced rates for many countries and deferred shortfall charges until later in the contract term.

[4] AT&T includes the following costs in its definition of LRIC: international settlement payments, the domestic link of the call (network operating costs, cost of capital, etc.), undersea link of the call (cost to carry a minute on the undersea cable to the specific country), termination of proportionate return traffic, average billing cost per message and other business expenses (sales expense, account management and other overhead allocable to calling to a given country). AT&T Transmittal No. CT 3076 at Attachment 1 (filed Feb. 6,1995). For the purposes of this Order, we will divide AT&T's costs into two categories, settlement costs and non-settlement LRIC.

[5] *Id.* at 9.

$14 million for 3 years,[6] and would cap the credit for the twelfth month at $205,000.[7] None of these limitations is presently contained in Contract Tariff No. 360.[8]

4. ICC, MCI Telecommunications Corp. (MCI) and Tel-Save, Inc. (Tel-Save) filed petitions against Transmittal No. CT 3076 on February 13, 1995. ICC, the original Contract Tariff No. 360 customer, terminated its service with AT&T and withdrew its petition on April 25, 1995 as part of a settlement between AT&T and ICC. The Bureau issued an order suspending Transmittal No. CT 3076 and granting in part and denying in part the petitions of MCI[9] and Tel-Save.[10]

5. AT&T contends that the unilateral changes proposed in Transmittal No. 3076 are justified under the "substantial cause" standard that the Commission has applied in previous cases. In support of that claim, AT&T submitted a study that projected that its

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[6] Transmittal No. CT 3076, Contract Tariff No. 360 at 2nd Revised Page 3.

[7] Contract Tariff No. 360 provides a credit equal to the customer's AT&T Megacom Service international usage charges in the twelfth month. AT&T states that, normally, such "free month" offers limit maximum usage with a dollar cap and tie it to the customer's average usage in prior months. *See id.* at 5, n.13.

[8] AT&T has submitted the following documents in this proceeding in support of the revisions introduced in Transmittal No. CT 3076. Reply (February 16, 1995); Letter from Shari Loe, Senior Attorney for AT&T, to David Nall, Deputy Division Chief, Tariff Division, Federal Communications Commission (March 24, 1995) (AT&T's March 24 Letter); Letter from Shari Loe to David Nall (April 11, 1995) (AT&T's April 11 Letter); Letter from Shari Loe to David Nall (May 16, 1995) (AT&T's May 16 Letter); Letter from Shari Loe to David Nall (May 23, 1995) (AT&T's May 23 Letter); Letter from Shari Loe to David Nall (June 2, 1995) (AT&T's June 2 Letter); Letter from Daniel Stark, Vice President and Chief Counsel, AT&T, to A. Richard Metzger, Jr., Deputy Bureau Chief, Common Carrier Bureau (July 27, 1995) (AT&T's July 27 Letter).

[9] MCI has submitted the following documents in this proceeding: Petition (February 13, 1995); Letter from Donald J. Elardo, Director, Regulatory Law, to David Nall, Deputy Division Chief, Tariff Division, Common Carrier Bureau, Federal Communications Commission (May 16, 1995) (MCI's May 16 Letter); Letter from Donald J. Elardo to David Nall (May 26, 1995) (MCI May 26 Letter); Letter from Donald J. Elardo to David Nall (May 30, 1995) (MCI May 30 Letter); Letter from Donald J. Elardo, Director, Regulatory Law, MCI, to A. Richard Metzger, Jr., Deputy Bureau Chief, Common Carrier Bureau, FCC (August 1, 1995) (MCI's August 1, 1995 Letter).

[10] *See Suspension Order.*

revenues on Contract Tariff No. 360 would be $63.1 million below its LRIC[11] if it were required to provide service to a hypothetical customer having one-tenth of MCI's historical international traffic to 16 countries where the current Contract Tariff No. 360 rates are furthest below AT&T's LRIC.[12] If profitability was calculated based only on net settlement costs, AT&T projected that it would lose $36.4 million over three years to such a customer.[13] AT&T asserted that these estimated losses would be caused by several provisions in Contract Tariff No. 360:[14] (a) unlimited credit for calling in the twelfth month of the thirty-six month term plan; (b) unlimited below cost calling;[15] (c) omission of Schedule II Rates for Mexico;[16] and (d) term and volume discounts.[17] The revisions proposed in Transmittal No. CT 3076 would modify these current provisions to eliminate AT&T's expected revenue shortfall. AT&T has also provided the Commission with actual figures regarding its losses. AT&T claims total losses during approximately three months of service to MCI of $384,599 if only settlement costs are considered and

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[11] Transmittal No. CT 3076, at 2.

[12] *Id.* at Attachment 2, page 1.

[13] *Id.* at Attachment 2, pages 1 and 2.

[14] *Id.* at 5-7.

[15] *Id.* at 6. The contract tariff does not limit the volume of traffic to the countries that are below cost or insure that any calling is directed to countries that are above cost.

[16] *Id.* at 7. Schedule I normally sets the rates for calling from the point of origin within the United States to the Mexican border. Schedule II sets the rates for the call from the Mexican border to the destination point within Mexico. The total cost of a call from the United States to Mexico is normally computed by calculating the two rates separately and adding them together. The January 1994 changes to this tariff eliminated the Schedule II (within Mexico) rates, while more than tripling the Schedule I (within United States) rates for the Standard period. AT&T states that the Mexico rates currently in effect are below cost.

[17] AT&T's March 24 Letter at 4. AT&T states that this tariff erroneously applied term and volume discounts to rates that were already low and developed on the assumption that such discounts would not apply.

$572,130 if both settlement costs and non-settlement LRIC are the benchmarks.[18] AT&T reports that all of MCI's usage under Contract Tariff No. 360 has been to Mexico.[19]

6. After reviewing the record up through June 5, 1995, the Common Carrier Bureau suspended Transmittal No. CT 3076 for five months. The Bureau found that, as for the proposed rate increases, usage limits, and elimination of term and volume discounts, "AT&T has not established that its projected losses are sufficiently large enough or certain to constitute 'substantial cause.'"[20] As for the proposed modification of the "free month" provision, the Bureau found that AT&T would incur losses on all of the traffic carried that month, but that AT&T had not shown substantial cause for its specific modification to that provision, the revenue cap of $205,000.[21]

## B. The Commission's Prior "Substantial Cause" Decisions

7. In *Showtime Networks, Inc. et. al. v. FCC*,[22] the carrier, RCA Americom, had filed with the Commission a ten-year schedule of rates designed to permit the entry of customers into the satellite services market at a reasonable price. Less than two years into the term, RCA Americom filed a new tariff with the Commission, increasing rates by about 15 percent and altering the rate structure and corresponding terms and conditions of the service. After the cable programmers complained and Commission investigated the structural changes, the Commission initially rejected the proposed changes on the ground that it had measured the proposed changes against a "substantial cause" standard and found that Americom had not demonstrated the requisite cause.

8. On review, the court of appeals accepted the Commission's approach of balancing the relative harm to ratepayers if the proposed revisions were made against the harm to the carrier if the revisions were not made. The carrier could thus be required to show both that increased costs justified the increased rates and that customers, who may have relied on the original tariff, would not be unduly burdened by the higher rates. The

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[18] AT&T's July 27 Letter, at Attachment. Losses based on settlement payments only were: $122,400 through May 1, 1995; $121,651 during May of 1995, and $140,548 during June of 1995. Losses based on both settlement costs and non-settlement LRIC were: $168,286 through May 1, 1995; $212,356 during May of 1995, and $191,487 during June of 1995.

[19] *Id.*

[20] *Suspension Order* at ¶ 20.

[21] *Id.* at ¶ 22.

[22] 932 F.2d 1 (D.C. Cir. 1991).

court further cautioned that the "substantial cause" test should be contained within the framework of the statutory "just and reasonable" charges standard in 47 U.S.C. § 201(b), and should not amount to an additional hurdle the carrier had to clear. The court remanded so that the Commission could clarify whether it had indeed employed "substantial cause" only as an aid in ascertaining whether newly filed modifications to RCA Americom's long-term service tariffs are within the zone of reasonableness.

9. When RCA Americom refiled increased rates, the Commission allowed them to take effect because events "clearly unforeseeable" in 1978 provided the requisite cause for the higher rates; the rate of inflation had been much higher than expected, RCA Americom had lost a satellite and its cost of launching additional satellites had soared because the space shuttle had been delayed. Additionally, all of these factors had increased the perception of risk in the satellite business and raised RCA Americom's cost of capital.[23] There was not a plain and certain link, the Commission indicated, between rising costs and Americom's proffered structural changes. There was, however, an altogether evident connection between rising costs and the need for more revenue. On review, the court noted that the Commission had emphasized that RCA Americom had eliminated the subscriber's liability for early termination of service.[24]

10. The Commission also applied the "substantial cause" doctrine in *AT&T Transmittal Nos. 2404 and 2535.*[25] In that case, AT&T had proposed to modify its tariffs for 800 service term plans so that customers would only be excused from liability for early termination of a term plan if the same customer initiated both the existing term plan and the term plan to which it was moving its 800 service traffic. These revisions, if they had gone into effect, would have prevented a reseller from transferring its traffic to another reseller that also had a term plan unless the original reseller paid a termination penalty.

11. The Bureau rejected AT&T's proposed changes to these transmittals, stating that AT&T's "substantial cause" showing was deficient. AT&T's argument was based on two claims. First, that it would be injured if it lost the "minimum revenue commitments" from customers that were able to terminate their term plans without liability and "roll over" their traffic into another customer's term plan. The Bureau criticized AT&T's inadequate explanation of why this was a problem when aggregators moved traffic, but not a problem when single customers moved traffic. Second, AT&T claimed that it would

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[23] RCA Americom Communications, Inc., Revisions to Tariff F.C.C. Nos. 1 and 2, Transmittal No. 293, 2 FCC Rcd 2363, 2368 (1987) (*RCA Final Order*).

[24] *Showtime*, 932 F.2d at 11.

[25] AT&T Communications, Revisions to Tariff F.C.C. No. 2, Transmittal Nos. 2404 and 2535, 5 FCC Rcd 6777 (Com.Car.Bur. 1990) (*AT&T Transmittal Nos. 2404 and 2535*).

lose revenue if the transmittal did not take effect. The Bureau criticized this argument, noting that AT&T was claiming that its revenues would be reduced, not that it would fail to recover its costs or that net revenues would be negative. The Bureau also noted that AT&T had not provided any explanation of how it would lose revenues in cases where the customer terminating a term plan continued to take AT&T service under a different plan. The Bureau stated that the mere fact that AT&T would make less money when customers take advantage of the lower tariffed rate in the plan to which they convert does not constitute an injury to AT&T that outweighs the existing customer's expectation of stability and that AT&T has failed to justify the disparate treatment of the consolidation of multiple customers' plan when compared to that accorded single customer consolidations.

12. Finally, in the *Interexchange Reconsideration Order*[26] the Commission stated that it would "consider on a case-by-case basis in light of all relevant circumstances whether a substantial cause showing has been made" that would permit a carrier to alter unilaterally the material terms of a contract-based tariff.[27] While the Commission found that "commercial contract law principles are highly relevant to an assessment of whether a contract-based tariff revision is just and reasonable under the substantial cause test," the Commission decided that it was not prepared to hold "that these principles provide definitive parameters for a substantial cause showing."[28] The Commission noted that "[a]pplication of the substantial cause test depends upon the equities of the particular situation."[29]

## III. DESIGNATION OF PARTIES

13. This investigation resulted from tariff revisions filed by AT&T which were disputed by MCI. The Bureau finds that the participation of both of these carriers as parties to this investigation would be instrumental to the resolution of the issues posed by the proposed revisions and the other material presented in this proceeding. Accordingly, we will designate AT&T and MCI as parties to this investigation.

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[26] Competition in the Interstate Interexchange Marketplace, 10 FCC Rcd 4562, 4573-74 (1995) (*Interexchange Reconsideration Order*).

[27] *Id.*

[28] *Id.* at 4574.

[29] *Id.* at 4574 n.49, *citing* RCA American Communications, Inc., 86 FCC 2d 1197, 1201-02 (1981) (*RCA 1981 Order*).

## IV. ISSUES FOR RESOLUTION

14. As we discussed in the order initiating this investigation, the appropriate standard for review of Transmittal No. CT 3076 is "substantial cause."[30] The "substantial cause" test ascertains reasonableness where a carrier provides service under a comprehensive, contract-like tariff scheme, and later seeks to modify material provisions during the term specified in the tariff. The Commission's statutory responsibilities dictate that it take into account the position of the relying customer in evaluating the reasonableness of the change. The Commission has stated that, in balancing the carrier's right to adjust its tariff in accordance with it business needs and objectives against the legitimate expectations of customers for stability in term arrangements, the reasonableness of the proposal to revise material provisions in the middle of a term must hinge to a great extent on the carrier's explanation of factors necessitating the desired changes at that particular time.[31] Our goal in this investigation, therefore, is to ascertain the reasonableness of AT&T's proposed revisions in Contract Tariff No. 360 in light of MCI's commitment and expectation that the unrevised provisions of this tariff would apply across a three-year term.

**Issue I:** What "substantial cause" showing is AT&T required to make to justify proposed changes to a contract tariff for streamlined business services that are opposed by a customer that acquired service under the contract tariff as a generally available offering?

### A. Contract Tariff Regulation and "Substantial Cause"

15. The *Showtime* case involved interstate services that were subject to rate-of-return regulation. The court was persuaded to affirm the Commission's decision in that case, in part because the FCC had found that RCA Americom's revenue requirement for its domestic satellite services had increased, and had authorized a higher rate of return. In *AT&T Transmittal Nos. 2404 and 2535,* the service under consideration was regulated under price caps. The services at issue in the present case are provided under a contract tariff, subject to streamlined regulation. Thus, prior Commission decisions interpreting the substantial cause test have not addressed the circumstances presented in this case. We therefore invite the parties to comment as to how changes in our regulation of AT&T (termination of rate-of-return regulation, streamlining of business services, etc.) affect the application of the substantial cause doctrine to the proposed revisions to Contract Tariff No. 360.

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[30] *Suspension Order* at ¶ 12.

[31] *RCA 1981 Order*, 86 FCC 2d at 1203.

16. We also invite the parties to comment on whether there is, and should be, mutuality of obligation under the "substantial cause" doctrine. By "mutuality of obligation," we mean the conceptual framework for binding obligation, consideration, and performance that is present in a standard contractual arrangement. Specifically, we invite parties to comment on whether the substantial cause doctrine should result in both parties being equally bound to a long-term agreement or whether streamlined regulation requires a different application of the doctrine than that presented in the Commission's prior decisions. The parties should address whether a substantial cause doctrine adapted to streamlined regulation should essentially convert contract-based tariffs and other term commitment tariffs into agreements that are binding on customers but subject to change by the carrier through tariff filings that are presumptively lawful and subject only to a streamlined review process.[32] In this context, we invite comment on the significance of AT&T's proposal to allow MCI to terminate its obligations under Contract Tariff No. 360 once the proposed revisions took effect. To the extent that AT&T comments on the customer's reliance or lack of reliance on the contract tariff, AT&T should discuss precedents in which the Commission has stated that a customer taking service under a contract-like tariff need not prove detrimental reliance as a prerequisite to applying the substantial cause doctrine.[33]

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[32] *But see* RCA Americom Communications, Inc., 84 FCC 2d 353, 359 (1980), stating:

> It strikes us as anomalous that a carrier could use a tariff filing process to prevent any of its service terms from being enforced against it by customers, while at the same time bind customers to all of tariff provisions for as long as the carrier wishes until the expiration of the terms by operation of the tariff itself. In effect then, the result would be an agreement that only one of the contracting parties could enforce.

[33] *See RCA Final Order*, 2 FCC Rcd at 2373 n.27; *see also* RCA Americom Communications, Inc., mimeo 6153, at ¶ 6 (Com. Car. Bur., Aug. 6, 1985), stating:

> RCA Americom further contends that a showing of customer reliance that RCA Americom not increase its rates is necessary for the application of the substantial cause test. We find no support for this argument in any Commission decisions on this matter. Moreover, customers are fully bound by tariffs as a matter of law. (footnote omitted) Thus, we need not determine, as RCA Americom asserts, whether any particular customers in fact relied upon RCA Americom not to increase its rates.

17. Moreover, in the *Interexchange Reconsideration Order*, we stated that commercial contract principles were "highly relevant" to a determination of whether a contract-based tariff revision is just and reasonable under the substantial cause test. That order, however, did not discuss how those commercial contract principles should be applied when, as in the present case, the proposed modification is not challenged by the original customer with which AT&T negotiated the contract tariff. The primary party affected in the present case is MCI, which purchased Contract Tariff No. 360 during an availability window and did not negotiate with AT&T. The parties should brief, in their direct cases, the issue of what factors the Commission should consider when applying the substantial cause standard in these circumstances.

**B. Cost Recovery and "Substantial Cause"**

18. AT&T asserts that its projected losses under Contract Tariff No. 360 establish the showing required to modify the terms of the tariffed offering. The parties should address in their direct cases whether and how any economic losses AT&T may incur as a result of providing service under Contract Tariff No. 360 justify the revisions under investigation. Specifically, we invite comment whether AT&T may satisfy the substantial cause standard in a case involving a service subject to streamlined regulation by showing that the costs it is likely to incur in providing service under Contract Tariff No. 360 exceed the revenues it is likely to generate. AT&T and MCI should address whether projected, rather than actual, losses can form a basis for a substantial cause showing. AT&T should fully explain the fundamental assumptions underlying the economic analysis used to predict such projected losses. Such explanation should include a full discussion of MCI's expected traffic patterns (*e.g.*, country of destination and peak and off-peak usage) and settlement costs. MCI's direct case should also discuss fully its expected usage of Contract Tariff No. 360.[34] AT&T should address how large its losses, projected or actual, must be before they satisfy the substantial cause test.

**Issue II:** Assuming that AT&T may show "substantial cause" to revise Contract Tariff No. 360 by demonstrating economic loss if Transmittal No. CT 3076 does not become

[34] In this regard, we note that AT&T's July 27 letter, in which it claims losses of $572,130 for the first three months of providing service to MCI under Contract Tariff No. 360, shows that MCI had usage billed only for calls to Mexico. AT&T's July 27 Letter at Attachment. That letter claims as well that AT&T incurred a net revenue increase for the standard rate period, but that this net gain was more than offset by losses incurred during the economy rate period. The parties should address whether this particular pattern, or similar patterns involving other countries, for MCI's traffic and for AT&T's economic gains and losses can reasonably be expected to persist during the three-year term for Contract Tariff No. 360.

effective, what is the relevant universe to be considered in determining whether AT&T is recovering its costs?

19. AT&T argues that it is justified in modifying Contract Tariff No. 360 over the objection of its customer because the revenue associated with this particular contract tariff does not recover the costs of providing service under that contract tariff. The parties should address the question of whether, assuming economic loss is an appropriate standard for determining substantial cause, it should be determined based on the AT&T approach or on one of the following standards: first, whether AT&T recovers its costs for all services provided to MCI; second, whether AT&T recovers its costs for all AT&T international services provided to MCI; third, whether AT&T recovers the costs of all services of the sort referenced in Contract Tariff No. 360. The parties are free to suggest other standards of cost recovery and to justify why such standards are more appropriate than those discussed here.[35] Additionally, AT&T and MCI should discuss whether, if AT&T successfully demonstrates substantial cause for the tariff revisions proposed in Transmittal No. CT 3076, the nondiscrimination provision of Section 202(a) of the Communications Act should require AT&T to raise any other similar domestic or international rate, *i.e.*, a rate that is below cost and that contains no effective limitations that would ensure that AT&T would recover its costs from other services that a customer is required to buy as part of a package that includes the below cost rate.

20. In their direct cases, MCI and AT&T should demonstrate what other services MCI is purchasing from AT&T and how the rates for these services compare with Contract Tariff No. 360. Additionally, AT&T should demonstrate whether it is recovering the cost of providing each generally tariffed service, Tariff 12 option or contract tariff that it provides to MCI.

**Issue III**: Assuming that AT&T is found to have shown "substantial cause" if its costs of providing a service exceed the revenues it generates from a service, what costs may it claim in determining whether a rate is "below cost"?

21. In its substantial cause showing, AT&T calculated its LRIC of providing Contract Tariff No. 360 by including costs in addition to the settlement payments that AT&T remits to foreign carriers that terminate AT&T traffic. In its direct case, AT&T should discuss whether non-settlement LRIC is properly considered in determining the profitability of a service for the purposes of the substantial cause doctrine. Additionally,

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[35] For example, cost recovery could be measured in the following contexts; a single contract tariff, all contract tariffs provided to a particular customer, all contract tariffs and Tariff 12 options provided to a particular customer, or all contract tariffs, Tariff 12 options and general tariffed services provided to a particular customer.

AT&T should explain in detail the calculations underlying its LRIC or it should suggest some other cost standard that should be used in determining whether it is recovering its costs of providing these services.

22. In its direct case, MCI should discuss whether AT&T should be allowed to include LRIC when calculating its costs of providing service to MCI for the purposes of showing substantial cause.

**Issue IV:** Is there substantial cause for altering Contract Tariff No. 360 to place a maximum limit on the customer's traffic under the free month promotion? If so, what should that limit be?

23. AT&T has demonstrated that it will generate no revenue for traffic carried under Contract Tariff No. 360 during the free month provision and that it will incur some level of expense in providing that service. In its direct case, AT&T should demonstrate how this situation differs from provisions in its other contract tariffs and its generic tariffs where promotional provisions allow for free carriage of customer's traffic subject to certain constraints. AT&T should explain the nature of these constraints in other tariffs and relate them to the constraint it has proposed in Transmittal No. CT 3076. AT&T should demonstrate that the injury to it under the existing free month provision of Contract Tariff No. 360, while taking into account the interests of the customer, will establish substantial cause to justify modification of this provision of the tariff. AT&T must also demonstrate that the $205,000 maximum limit contained in the transmittal is an appropriate limit.

24. In its direct case, MCI should demonstrate the extent to which it has relied on the free month provision in Contract Tariff No. 360, either by developing business plans and promotions based on this provision or by making contractual commitments to customers that assume that the free month promotion will be available.

**Issue V:** Is there substantial cause for altering Contract Tariff No. 360 to increase the contract rates, place limits on the percentage of traffic that can go to particular countries, eliminate volume and term discounts, and place a maximum limit on a customer's total usage under the contract tariff?

25. In its direct case, AT&T should continue to provide updated information about its actual losses on service provided to MCI under Contract Tariff No. 360.[36] AT&T should provide us with a net revenue showing for MCI's usage under this contract tariff. To the extent that AT&T's substantial cause argument rests on the assumption that

[36] *See* n.18, *supra*.

it may incur higher losses in the future under this contract tariff, AT&T may also address whether the fundamental assumptions underlying its projections of losses have, in this instance, been persuasively challenged.

26. In its direct case, MCI should demonstrate the extent to which it has relied on the rates, terms and conditions in Contract Tariff No. 360, either by developing business plans and promotions based on this contract tariff or by making contractual commitments to customers that assume that the rates, terms and conditions will be available. MCI shall also provide information about any other international services it takes from AT&T, either under contract tariff or other tariffs. MCI shall also provide information about what rates it would have to pay if it was unable to obtain services under Contract Tariff No. 360. MCI shall also provide information about whether it has the capacity, either through its own facilities or through services provided by other carriers, to carry the traffic it is delivering or reasonably expects to deliver through Contract Tariff No. 360.

**Issue VI:** If we find that AT&T has successfully shown substantial cause and we allow the proposed contract revisions to become effective, should AT&T make available the revised version of Contract Tariff 360 to additional customers?

27. We normally require AT&T to include provisions to allow other customers to order the amended contract tariff in order to fulfill the requirement to make contract tariffs generally available. In its direct case, AT&T should address whether such a provision is appropriate when the only changes to the tariff would be those for which the carrier has successfully made a showing of substantial cause and specifically whether such a provision is appropriate for a revised version of Contract Tariff No. 360.

## VI. PROCEDURAL MATTERS

### A. Filing Schedules

28. This investigation, to be identified as CC Docket No. 95-XIX, will be conducted as a notice and comment proceeding during which AT&T bears the burden of proof to show that the suspended modifications to Contract Tariff No. 360 are just and reasonable.[37] AT&T is designated as a party to this proceeding and shall file its direct case no later than 14 days after release of this Order. AT&T's direct case must present its positions with respect to the issues described in this Order. Pleadings responding to the direct cases may be filed no later than 28 days after the release of this Order. The parties

[37] *See* Sections 201(b), 204(a) of the Communications Act, 47 U.S.C. §§ 201(b), 204(a).

may each file a "Rebuttal" to oppositions or comments no later than 35 days after release of this Order.

29. An original and four copies of all pleadings must be filed with the Secretary of the Commission. In addition, one copy must be delivered to the Commission's commercial copying firm, International Transcription Service, Room 246, 1919 M Street, N.W., Washington, D.C. 20554. Also, one copy of each pleading must be delivered to the Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments must specify the docket number of this investigation.

30. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission may take into account information and ideas not contained in pleadings, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of reliance on such information is noted in the order.

## B. Ex Parte Requirements

31. *Ex parte* contacts (*i.e.*, written or oral communications which address the procedural or substantive merits of the proceeding which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding during the time periods established by the Commission's rules. Written *ex parte* contacts must be filed on the day submitted with the Secretary and Commission employees receiving each presentation. For other requirements, *see generally* Section 1.1200 *et seq.* of the Commission's Rules, 47 C.F.R. § 1.1200 *et seq.*

## C. Paperwork Reduction Act

32. The investigation established in this Order has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection, or record keeping, labeling, disclosure or other record retention requirements as contemplated under the statute. *See* 44 U.S.C. § 3502(4)(A). The request for information contained herein is not subject to the clearance procedures of 44 U.S.C. § 3507.

## VII. ORDERING CLAUSES

33. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 204(a), AT&T Corporation and MCI Telecommunications Corp. SHALL RESPOND to the issues in this Order Designating Issues for Investigation, no later than 14 days after release of this Order. Interested parties may file pleadings responding to the direct cases no later than 28 days after release of this Order and AT&T Corporation and MCI Telecommunications Corp. may file rebuttals no later than 35 days after the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau